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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.C., A Person Coming Under the
Juvenile Court Law.

B238130

(Los Angeles County
Super. Ct. No. CK90550)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VALERIA A. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County,
Rudolph Diaz, Judge. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for
Defendant and Appellant Valeria A.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant Chandler C.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel and Stephen D. Watson, Associate County Counsel for Plaintiff and Respondent.

Valeria A. (Mother) and Chandler C. (Father), parents of A.C., born in November 2010, appeal the jurisdictional and dispositional orders of the juvenile court. Father contends the finding of jurisdiction was not supported by substantial evidence. Both Father and Mother contend the court's decision to remove A.C. from her parents' custody was not supported. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initial Interview and Detention

Mother, age 19, and Father, age 18, are still in high school. Mother lives with her parents; Father lives with his grandparents. On September 26, 2011, the couple engaged in a violent altercation at Father's home. Mother called the police and reported that Father had attempted to choke her while she was holding A.C., that he had kicked her elbow, and that he had threatened to kill her. She said she was afraid of him because she had seen him in possession of a gun in the past. The police made no arrests, but reported the matter to the Department of Children and Family Services (DCFS). Mother told the caseworker that Father had kicked and pushed her and attempted to choke her while she was holding A.C.¹ The caseworker asked about the couple's history of violence. Mother reported that two years earlier, prior to A.C.'s birth, the couple had had a fight at school that was broken up by a school counselor, and that Father had been placed in a domestic

¹ The caseworker observed a bruise on Mother's thigh.

violence program as a result of the incident. Mother also reported that she had hit, slapped or pushed Father on three prior occasions. Mother told the caseworker that she and Father had broken up a week earlier, that Father was dating other women, and that they did not plan to get back together. The caseworker “strongly encouraged” Mother to stay away from Father until the investigation could be completed.

Father provided a different version of events to the caseworker and the police. He stated that Mother had grabbed his shirt and tried to hit him while he was holding A.C. after he had accused Mother of deliberately scratching the baby because she was jealous that Father had a new girlfriend.² The paternal grandmother partially backed up Father’s version, stating that she went outside when she heard the two parents arguing and saw Mother accosting Father by pulling on his shirt and attempting to hit him while he was holding A.C.³ The grandmother immediately took A.C. away. As she had with Mother, the caseworker encouraged Father to refrain from contact with Mother until DCFS completed its investigation.

DCFS did not seek to detain the child until October 18, a few weeks after the initial investigation. The caseworker learned that Mother and Father had spent the prior weekend together. Mother stated she was considering getting back together with Father, whom she described as “seem[ing] sincere [about wanting] to change.” That day, the caseworker interviewed maternal relatives, who said there

² The officers and the caseworker noticed a small scratch on A.C.’s cheek. Mother reported that the child’s face was accidentally scratched when she fell against her stroller. The placement and appearance of the scratch was consistent with that version of events.

³ The paternal grandmother described Mother as “fight[ing] like a man” and said that Father was not fighting back.

had been an incident of domestic violence a few months earlier in which Father had choked or “strangle[d]” Mother. A maternal uncle also reported witnessing Father hit Mother when A.C. was present and seeing other marks and bruises on Mother prior to the September 26 incident. After receiving this information, DCFS detained A.C.⁴

Mother and Father contested detention. At the October 31 detention hearing, Father denied that Mother had attacked him on September 26 or that they had been in a physical fight. He denied that there had been any prior incidents of domestic violence. He denied being in a program for perpetrators of domestic violence. He stated that he had been placed in an anger management program because he had acted up at school. Mother testified that she had not been in Father’s presence since the weekend prior to October 18; that until October 18, the caseworker had not told her definitively to stay away from Father; and that she would comply with a court order to have no contact with Father. She was asked about the earlier choking incident described by her relatives. She denied that Father had choked her, saying that they had pushed each other while A.C. was in the room. Asked about the September 26 incident, Mother denied that either parent had hit the other and denied telling the police that she was afraid of Father because she had seen him with a gun in the past. She said that A.C.’s paternal grandmother had taken the child into the house as soon as she and Father began to argue.

Arguing in favor of detention, counsel for DCFS emphasized that the caseworker’s investigation had revealed “the parents were not genuine in all their disclosures.” The caseworker did not learn of Father’s threat and the possible presence of a gun until she received a copy of the police report; she did not learn of the choking incident until October 18. According to DCFS’s counsel, the issue

⁴ At the time, A.C. was living with Mother.

was not the timing of the caseworker's admonition to the couple to refrain from contact: "[T]he issue is, has there been D.V.? Yes. Has there been more than one incident? Yes. Is there a pattern of [the parents] going back together again? Yes. Have they owned up to it or had any insight into the problem? No."

A.C.'s counsel similarly argued in favor of detention. Counsel urged the court to place greater significance on the evidence that the parents "have a history of engaging in domestic violence, both of them, while the child is in their arms," and that the parents were "backtracking from the statements that they made both to the police and to the social worker," thus making their credibility "nil, virtually, at this point."

The court found a *prima facie* case for detaining A.C., citing "serious concerns" about safety, "problems with the credibility" and "no reasonable means by which the child's physical and emotional health can be protected without removing the child from the parents' physical custody."⁵

B. Jurisdiction/Disposition

Interviewed for the jurisdictional/dispositional report, Mother denied that A.C. was present during the September 26 fight, stating that the paternal grandmother had taken the baby away before matters became physical.⁶ Mother stated that she had slapped Father and that Father had pulled her hair, but denied that anything more serious had occurred during that altercation. She said that Father had tried but failed to kick her and that the bruise on her leg was from accidental contact with a pointed gate or ramp. Mother further stated that on the

⁵ A.C. was initially placed with her maternal grandmother, but was subsequently moved to a foster home due to the presence of a person under house arrest living with the grandmother.

⁶ Father did not meet with the caseworker or provide a further statement.

occasion of the choking incident reported by her relatives, Father had put his hands on her chest to hold her down and that it might have looked like choking to someone observing from behind him. Mother reported that she had begun parenting classes and found them “helpful.” The caseworker concluded that A.C. would not be safe in the home of her parents because “[t]he parents have a history of domestic violence that seems as if it is escalating,” “[M]other also spent a night at [Father’s] house even after the domestic violence had occurred,” and “[M]other’s statements and description of the domestic violence ha[ve] changed to become more protective of [F]ather” by minimizing the physical violence that had occurred and by denying A.C. was present.

At the November jurisdictional/dispositional hearing, Mother pled no contest to the following allegations: (1) on September 26, 2011, Mother and Father “engaged in a violent altercation in which [Father] choked [Mother] while [Mother] held the child in her arms” and Father “kicked and pushed [Mother], inflicting a bruise to [her] thigh”; and (2) “[o]n prior occasions, [Mother] struck and slapped [Father]” and “the parents struck each other.” Father contested the allegations.⁷ After reviewing the record and hearing from counsel, the court found the allegations true and concluded jurisdiction was warranted under section 300, subdivision (b) (failure to protect). At the disposition hearing, which took place the next day, the court ordered Mother to participate in a 26-week domestic violence program and to participate in individual counseling to address her responsibility for the ongoing domestic violence. Father was ordered to participate in a 26-week domestic violence program and to undergo individual counseling to

⁷ Father did not present new evidence, but relied on evidence in the record and the argument of counsel.

address his role in the ongoing domestic violence and to develop conflict resolution skills and anger management techniques. Both parents appealed.

DISCUSSION

A. *Jurisdiction*

The court found jurisdiction over A.C. appropriate under Welfare and Institutions Code section 300, subdivision (b).⁸ A child comes within the jurisdiction of the juvenile court under that provision if he or she “has suffered, or there is a substantial risk that [he or she] will suffer, serious physical harm” that results from “the failure or inability of his or her parent or guardian to adequately supervise or protect the child” Father contends substantial evidence does not support the court’s jurisdictional findings.⁹ We disagree.

“We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) A finding is not supported by substantial evidence if it is based solely on unreasonable inferences, speculation, or conjecture. (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

Father contends that the three instances of domestic violence between him and Mother documented by DCFS do not support that A.C. was at risk of serious harm. Isolated instances of domestic violence between a child’s parents will not support jurisdiction, particularly where the only instances established by the

⁸ Statutory references are to the Welfare and Institutions Code.

⁹ Mother does not challenge the jurisdictional order.

evidence occurred years earlier. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 398.) However, as numerous courts have found, domestic violence regularly inflicted on one parent by another in a child's presence supports a finding of risk of serious physical harm for purposes of subdivision (b) and/or subdivision (a) of section 300. (See, e.g., *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-600 [father placed child at substantial risk of serious physical injury by: (1) driving with one hand on steering wheel and using other hand to hit and choke mother; (2) struggling with mother over car seat while child was in it; and (3) physically attacking mother while she was holding child]; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185-186 [jurisdiction supported in part by evidence that after argument, father hit mother's car with his truck while children were in car]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [jurisdiction upheld where child cut finger and foot on glass vase thrown at mother]; see *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5 ["Both common sense and expert opinion indicate spousal abuse is detrimental to children"].) The determinative issue is whether "there is evidence that the violence in ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*In re Daisy H.*, *supra*, at p. 717.)

The evidence here was sufficient to support the court's determination that the domestic violence was ongoing, was likely to continue and created a substantial risk of physical harm to A.C. The first documented incident occurred two years earlier, before A.C. was born. The second occurred three months prior to the detention and involved Father choking Mother in A.C.'s presence. The third occurred a few weeks before the detention and involved Father choking and threatening to kill Mother while she was holding A.C. On that occasion, A.C. was at direct risk of being injured by her parents' physical altercation. As the three incidents involved increasing seriousness and increasing risk to A.C., and two of

the three incidents had occurred in the recent past, the court's jurisdictional finding was supported by the evidence of these three incidents alone. Moreover, the court reasonably could have found that additional instances of domestic violence occurred based on Mother's statement that she had struck Father several times prior to the September 26 incident, as well as the maternal uncle's statement that he had observed bruises on Mother prior to September 26 and seen Father hit Mother on other occasions. On this record, there was ample evidence to support the court's jurisdictional finding.

B. Disposition

Both parents challenge the court's dispositional order, contending there was no evidence that either parent engaged in violence outside of their relationship with each other, and that the court could have prevented that violence by instructing them to keep away from each other as an alternative to removing A.C. from their custody.

After finding that a child is a person described in section 300 and therefore the proper subject of dependency jurisdiction, the court must determine "the proper disposition to be made of the child." (§ 358.) "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] . . . [that] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) On review of the court's dispositional findings, "we employ the substantial evidence

test, however bearing in mind the heightened burden of proof.” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

To support its dispositional order removing custody from a parent, “the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) “The . . . child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child.” (*Ibid.*; accord, *In re Kristin H.*, *supra*, 46 Cal.App.4th at pp. 1656-1658; see also *In re Y.G.* (2009) 175 Cal.App.4th 109, 116 [juvenile court may “consider a broad class of relevant evidence in deciding whether a child is at substantial risk from a parent’s failure or inability to adequately protect or supervise the child”].)

The court’s decision was appropriate under the circumstances. The evidence established that when Mother and Father became angry with each other, they engaged in physical altercations, without regard to A.C.’s safety or welfare. The evidence further established that although Mother was not free from fault, Father was the more serious aggressor. Finally, the evidence established that Mother was willing to change her story to protect Father and was willing to maintain a relationship with him despite their history. The court could reasonably conclude that Mother could not be trusted to obey a stay away order.

Appellants appear to believe that DCFS and the court unfairly punished them for getting together for one weekend, although they had not been specifically instructed to keep away from each other by either the caseworker or the court. We do not view the parents’ decision to spend the weekend together as the determinative factor in DCFS’s decision to detain A.C. or the court’s decision to remove her from her parents’ custody. The day the caseworker learned of the parents’ weekend together, she also learned there had been another incident of serious domestic violence a few months earlier (in which Father had choked

Mother), and that on other occasions Mother had unexplained bruises. The caseworker also learned that Father and his new girlfriend had split up, clearing the way for Mother and Father to get back together. Almost immediately after spending time with Father, Mother began minimizing the domestic violence, claiming that Father had not threatened, hit or kicked her on September 26, and that A.C. was not present during any physical altercation. It was this behavior, emphasized by the caseworker, counsel for DCFS and counsel for A.C., that persuaded the court to uphold the decision to detain A.C. and subsequently order removal from the parents' custody. We find no basis for overturning either order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.